



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO-7032-2010 (O&M)

Reserved on 04.03.2025

Pronounced on: March 26, 2025

Surinder Kumar

.....Appellant(s)

Vs.

Sunder Devi and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Amit Jain, Advocate and
Mr. Himanshu Joshi, Advocate
for the appellant.

Mr. Akhil Saini, Advocate for
Mr. Pradeep Goyal, Advocate
for respondent No.3-Insurance Company

Mr. N.K. Manchanda, Advocate
for respondent No.5.

SUDEEPTI SHARMA J. (ORAL)

1. The instant appeal has been preferred by the owner (Surinder Kumar son of Jagmal Singh) of the offending vehicle offending vehicle i.e. offending vehicle i.e. dumper No. HR-26A-1663 for setting aside the award dated 15.02.2007 qua the appellant passed by the learned Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal'), whereby, the appellant was made liable to pay the compensation to the claimants and further recovery rights were given to the Insurance Company to recover the same from him.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition is that on 21.1.2002, Surender Kumar, (since deceased), started his journey from Hisar



while driving truck No.HR-46-3217. It is averred that at about 7.30 pm,. when the truck reached near village Chikanwas on Hisar Sirsa road, a dumper truck bearing registration No. HR-26A-1663 being driven in a rash and negligent manner came from the opposite side and while coming on wrong side of the road, struck against the said truck. As a result of which, both the drivers of the vehicle had died and cleaner of dumper No.HR-26A-1663 i.e. Sandeep sustained multiple injuries on his body. The accident is alleged to have occurred due to rash and negligent driving of dumper truck No.HR-26A-1663. In this regard FIR No.17 dated 22.1.2002, u/s 279/304-A IPC was also registered at Police Station Agroha.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

3. The learned counsel for the appellant contends that the Ld. Tribunal has erred in law as well on facts while fastening the entire liability on the appellant/owner of offending vehicle i.e. dumper No. HR-26A-1663. He further contends that Ld. Tribunal has overlooked the fact that the driver of the offending vehicle i.e. dumper No. HR-26A-1663 was Balwant whereas the alleged Surrender who was held as the driver of offending vehicle i.e. dumper No. HR-26A-1663 by the Ld. Tribunal, was actually the driver of truck No.HR-46-3217. Therefore, the Ld. Tribunal has erred in fastening the liability upon the appellant-Surrinder Kumar (owner of offending vehicle i.e. dumper No. HR-26A-1663) and entitling the Insurance Company to recover the same from him.

4. *Per contra*, learned counsel for the respondents No. 3 and 5, vehemently argue that the Ld. Tribunal has rightly made the appellant liable and granted recovery rights to the Insurance Company to recover the amount



from the owner of the offending vehicle i.e. dumper No.HR-26A-1663. Therefore, they pray for dismissal of the present appeal.

5. I have heard learned counsel for the parties and perused the whole record of this case.

6. A perusal of the award shows that the Ld. Tribunal has rightly fixed the liability of the offending vehicle i.e. dumper No. HR-26A-1663 by declaring that it was being driven in a rash and negligent manner which caused the accident on 21.01.2002, but the Ld. Tribunal has erred in fact while determining the liability to pay the compensation. A bare reading of the award shows that the Ld. Tribunal got confused in the names of Surrinder (son of Jagmal Singh) who was owner of the offending vehicle i.e. dumper No. HR-26A-1663 and Surender (son of Shish Pal and Sunder Devi) who was the driver of the truck No.HR-46-3217. The relevant portion of the award revealing the error, is reproduced as under:-

“17. Now coming to first plank of contention as to whether the accident in question took place due to rash and negligent driving of truck No.HR-26A/1663 driven by Surender Kumar or truck No.HR-46/3217 driven by Dharambir, in this context PW10 Ramesh, who was the eye witness to the accident, stated that on 21.1.2002, he was standing near bus stand Hisar. A truck came on the road which was being driven by Surender son of Shishpal. The number of the truck was HR-46/3217. The truck was loaded with sugarcane. He boarded that truck. When they reached near Chikanwas, a dumper No.HR-26A/1663 came from the opposite side at about 7.00/7.15 P.M. being driven in a rash, negligent and Zig-zag manner and struck against their truck in which he was sitting. Surender driver of the truck died at the spot. He categorically stated that the accident took place due to rash and



negligent driving of the dumper. He admitted that no complaint was made against the driver of truck No.HR-26-A/1663. He was subjected to lengthy cross examination, but nothing adverse could be impeached. In cross examination, he again reiterated that the accident took place due to rash and negligent driving of truck No.HR-26A/1663 and not because of HR-46/3217. RW1 EHC Harbhajan Singh has proved copy of FIR Ex.R1 (Ex. P28) which was recorded by Hawa Singh ASI against both the drivers of the truck. He has also proved copy of report u/s 173 Cr.P.C. Mark-X/5, a perusal of which shows that police had submitted cancellation report of the case as both the drivers of the vehicles involved in the accident had died. RW1 also proved the recovery memo Mark X2 vide which both the trucks were taken into possession by the police. The truck No.HR-26A/1663 was taken on superdari by respondent. No.1 Surrender by furnishing superdaginama Mark-2. The positive evidence led in the court has not been rebutted by any evidence. The author of the FIR i.e. Ram Puram, eye witness, has not been examined to prove the contributory negligence. Thus, the plea of the negligence which could have been established by Ram Puram, who was the author of the FIR, wherein both the drivers of the truck have been blamed has not been examined. The fact remains that the positive evidence led in the court exclusively goes to show that the accident took place due to rash and negligent driving of truck No.HR-26-A/1663. The criminal case also could not proceed on account of death of both the drivers. There is no cogent evidence to show that there was any negligence on the part of the driver of truck No.HR-46/3217. Issue No.1 is accordingly decided in favour of the petitioners and against respondent No.1 and 2 i.e. Surrender Kumar owner and Oriental Insurance company, Insurer of the truck No.HR-26A/1663.”

X X X X X



24. Now coming to the contention as to who is liable to pay the compensation, in this context, it is not disputed that the offending dumper/truck No. HR-26-A/1663 was owned by Respondent No.1 Surender Kumar and it was duly insured with Respondent No.2 Oriental Insurance Company, as is evident from the insurance policy Ex.R3. The counsel for the Insurance Company contended that despite specific direction of the court petitioners Sunder Devi etc. failed to produce the licence of Surender, driver of offending truck No.HR-26A/1663. He drew my attention towards the cross examination of PW7 Sunder Devi who on 12.5.2005 stated in her cross examination that the copy of the driving licence of her son at his home and she can produce the same on the next day. Accordingly, she was directed to produce the same on the next date of hearing. She was recalled on 24.1.2005, wherein she stated that she has not brought the driving licence of her son Surender. Thus, it is clear that there is nothing to show that deceased Surender, driver of offending truck No.HR-26-A/1663, was holding a valid driving licence on the date of accident, but the question is whether the Insurance Company can be absolved of its liability to pay the compensation. Learned counsel for the respondent No.1 while relying upon *United India Insurance Company Ltd. Vs. Lehu and others* 2003 (1) ACC 611 (SC), *New India Assurance Co. Shimla Vs. Kamla and others, LTC etc.* 2001 (1) ACC 346 (SC) and *Lal Chand Vs. Oriental Insurance Co. Ltd. III* (2006) ACC 731 (SC), rightly contended that in such a situation the Insurance company cannot escape its liability but they may recover compensation from the insured. No evidence has come on record to show that the owner was negligent while keeping the driver. Insurer has to prove that the owner was guilty of negligence and failed to exercise reasonable care while keeping such a driver. It stands already established that Surender Kumar, respondent No.1 was the registered owner of truck No.HR-26-A/1663. No evidence has been led by the Insurance Company to prove that the petitioners have



no cause of action and locus standi to file the petition or that the claim petitions are the result of collusion between the petitioners and other respondents.”

7. A bare perusal of the above referred to paragraphs reveal that the Ld. Tribunal had gravely erred in fixing the liability to pay the compensation due to the confusion of the similar name i.e. Surrinder and Surender. The accident which caused the lives of the drivers of both the vehicles had occurred due to the rash and negligent driving of the offending vehicle i.e. dumper No. HR-26A-1663. But the Ld. Tribunal had erred in declaring the driver Surender as the driver of offending vehicle i.e. dumper No. HR-26A-1663, who in reality was the driver of truck No.HR-46-3217. This confusion can be resolved after simply perusing the evidence of the Sunder Devi (mother of Surender), who was examined as PW-7, who has clearly stated that her son Surender was employed as a driver with one Dharambir, who was the owner of the truck No.HR-46-3217.

8. Further Dharambir (owner of truck No.HR-46-3217) was examined as PW-11 who clearly stated that the deceased Surender was the driver of his truck No.HR-46-3217 and he used to pay him Rs.3000/- per month.

9. The eye witness to the accident Ramesh, who was examined as PW-10 stated that on 21.01.2002, he was standing near Bus Stand, Hisar and a truck came on the road which was being driven by Surender son of Shishpal, and the number of the truck was HR-46-3217. The above referred to testimonies clearly proved that Surender (son of Shishpal and Sunder Devi) was driving none other vehicle than the truck No. HR-46-3217.

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10. The offending vehicle i.e. dumper No.HR-26A-1663 was infact driven by one Balwant which is evident on record from the testimonies of his son-Sandeep @ Sanjay, who appeared in the witness box as PW-6 and stated that on 21.01.2002, he was travelling in dumper No.HR-26-A-1663, which was driven by his father Balwant.

11. Birmati-widow of the deceased-Balwant, was also examined as PW6, who categorically deposed that her husband was employed as a driver with Surrinder, who was the owner of the dumper No.HR-26-A-1633.

12. On the basis of the above testimonies, it was clearly established that the driver of the offending vehicle i.e. dumper No. HR-26-A-1663 was Balwant and not Surender (son of Shishpal and Sunder Devi). Thus, the Tribunal had gravely erred in fact while declaring Surender (son of Shishpal and Sunder Devi) rather than Balwant, as driver of the offending vehicle i.e. dumper No. HR-26-A-1663.

13. Therefore, the Ld. Tribunal has gravely erred in both law as well as in fact in granting recovery rights to the Insurance Company to recover the amount of compensation from the owner of the dumper i.e. Surrinder son of Jagmal Singh on the part of failure of Sunder Devi (mother of the deceased-Surender driver of truck No.HR-46-3217) to produce the driving licence of the driver Surender (driver of truck No.HR-46-3217), as the driving licence of the Surender (son of Shishpal and Sunder Devi) was not at all required as he was not the driver of the offending vehicle i.e. dumper No.HR-26-A-1663.

14. Further perusal of the award reveals that the ld. Tribunal has erred in framing the issues. The relevant issue No.1 is reproduced as under:-



‘1.whether the accident in question took place due to rash and negligent driving of either truck No.HR-26-A-1663 driven by Surender Kumar or truck No. HR-46-3217 driven by Dharambir.’

The above framed issue clearly shows the error of the Ld. Tribunal while framing the issues as the Tribunal was under a misconception of fact that the offending vehicle i.e. dumper was a truck No.HR-26-A-1663 being driven by Surender instead of Balwant.

15. In view of the above, the confusion created by the Ld. tribunal is sorted out/clarified by this court after perusing the record. Therefore, the perusal of the record shows that owner of dumper/truck No.HR-26-A-1663 is Surrinder and the driver of the same was Balwant (deceased); and the owner of truck No.HR-46-4217 is Dharambir and the driver of the same was Surender (deceased).

16. In view of the above, since it is clear from the facts of the record that the offending vehicle i.e. dumper/truck No.HR-26-A-1663 was being driven by Balwant whose owner was Surrinder and the turck No.HR-46-4217 was being driven by Surender whose owner is Dharambir.

17. In view of the above, the only issue which needs to be decided is that “whether Balwant, driver of offending vehicle i.e. dumper No.HR-26-A-1663, was holding a valid driving licence or not.”

18. Since the issue regarding the recovery rights available to the Insurance Company can only be settled after perusing the driving licence (record) of the deceased-Balwant, therefore, the matter is remanded back to the Ld. Tribunal to decide the claim petition on the above referred to issue on day



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to day basis within a period of one month from the date of receipt of copy of this judgment

19. All the parties are directed to appear before the Ld. Tribunal on 22.04.2025.

20. The Insurance Companies are hereby directed to disburse the current scheduled fee to Mr. Pradeep Goyal, Advocate and Mr. N.K. Manchanda, Advocate, within a period of 20 days from the date of receipt of the copy of this order, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, by this Court.

21. All the pending applications also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

March 26 2025
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Whether speaking/reasoned:	Speaking
Whether reportable	Yes / No